

Report of the
NGO EXPERT MEETING
on the
MANDATE
of the
SPECIAL
RAPPORTEUR
on
VIOLENCE
AGAINST WOMEN
its
CAUSES *and*
CONSEQUENCES



REPORT OF THE
NGO EXPERT MEETING ON THE
MANDATE OF THE SPECIAL RAPPORTEUR
ON VIOLENCE AGAINST WOMEN,
ITS CAUSES AND CONSEQUENCES

General Review of the Mandate of the Special Rapporteur on Violence against
Women, its Causes and Consequences including the Integration of Women's
Human Rights System-Wide in the UN

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I. Introduction

In 1994 the International Centre for Human Rights and Democratic Development convened an NGO expert meeting on the mandate of the Special Rapporteur on violence against women. The purpose of the meeting was to discuss the legal framework of the mandate, review the status of data on violence against women and consider the means for facilitating information exchange and coordination between the Special Rapporteur, the UN Centre for Human Rights, the Committee on the Elimination of Discrimination against Women (CEDAW) and the Division for the Advancement of Women (DAW).

Since that time, the international community has met in a series of UN world conferences and summits. A reading of the concluding documents from these gatherings makes it clear that women's human rights and violence against women have been integrated into the international community's thinking to the extent that the rights and needs of women are explicitly addressed in each of them. These final declarations and programmes of action also clearly set out a number of commitments governments voluntarily assumed to ensure the promotion and protection of women's human rights. Some of these commitments involve international action, others involve reform of the UN and the international human rights and financial systems and still others place the obligation for reform firmly on states. As such, the declarations and programmes of action reflect the ability of governments to agree on principles and, even, specific, tangible and real initiatives. It is against these promises to do more and to do better on behalf of women that the actual performance of states and the UN system can and must be measured.

The meeting of NGO experts convened by the International Centre in September 1997 was intended to review developments and consider progress made in implementation of the mandate of the Special Rapporteur on violence against women, bearing in mind the outcomes of these UN summits and conferences. The goal of the meeting was also to consider the ways and means by which NGOs could support the work of the Special Rapporteur more fully and contribute to the further development of the mandate. It was neither the goal nor intention of the meeting to establish a plan of work for the Special Rapporteur. Rather, it was to look at very important areas such as violence against women in situations of armed conflict, further development of an approach to deal effectively with violence against women in the community and family, the extent to which women's human rights and the issue of violence against women have been integrated into the work of other areas of the UN's human rights machinery and what new approaches might be developed by NGOs to improve the methodology and documentation of incidents of violence against women.

This report is a summary of points raised during the meeting.

The review of the functioning of the first three years of the mandate identifies areas in which the work of the Special Rapporteur has had a real and measurable

impact on laws and attitudes related to violence against women. The review also shows, however, that the awareness of the work carried out by the mandate is not as widespread as needed and that the international system for the protection of human rights remains arcane and in some respects beyond the reach of nationally and locally based NGOs. An evaluation of progress in the area of integrating the work of the mandate into various areas of the UN's human rights system also shows uneven results. Thus, while the Human Rights Committee has made some changes to its methods, a review clearly shows that considerably more scope exists for action than the Committee has considered so far. Similarly, while some internal reforms have led to more coordination between various agencies and bodies of the UN, not nearly enough has been done to ensure the integration of a gender perspective into the work system-wide. Neither has the specific nature of the economic, social and cultural rights of women consistently been weighed and there remains a clear need for greater attention to be paid to the impact of the social and economic policies on women and their contributive character in terms of the prevalence of violence against women as a result of poverty, cultural marginalization and social isolation. And finally, it is abundantly clear that women, who have been victims of rape and sexual violence as a deliberate instrument of war and conflict, for the most part remain outside the protection and rehabilitative measures established by the international community. Too little has been done to address the issue of the impunity of perpetrators of such violence, to hold those responsible to account, to ensure incorporation of crimes specifically against women into the statutes of ad hoc international tribunals, the international criminal court and national courts and to implement adequate witness protection measures for those women who choose to testify.

The purpose in citing the generally negative balance in the assessment of the impact of the mandate on the real situations of women worldwide is not to suggest that no progress has been made and that no commitment exists to make the work more effective. What it does suggest, however, is that more needs to be done to establish a coherent methodology and process of documentation on the violations of women's human rights and specifically in violence against women. There exists in the international and national systems an abundance of anecdotal information that often functions as the basis for reports of a general nature. There also exists a considerable amount of research and analysis in terms of standards, the normative framework and the scope of international law in terms of women's human rights and violence against women. What remains to be done is to convert the anecdotal documentation into well researched, credible and reliable empirical data upon which appeals for further and concrete action can be based.

And finally, Annex I of this report reproduces the text of a letter addressed to Mary Robinson, the new High Commissioner for Human Rights. The decision to convey to the High Commissioner the concerns of participants at the meeting and their recommendations for measures to be taken reflects a

growing view that the Office of the High Commissioner for Human Rights is the most promising of all the UN's mechanisms for achieving more coherent and substantive action through the international system to ensure the full respect for women's human rights, the integration of the work of the Special Rapporteur system-wide and the eradication of violence against women worldwide.

II. Overview of First Mandate (1994 - 1997)

The effectiveness of any of the thematic mechanisms established by the Commission on Human Rights cannot be judged on the basis of one three-year term. The impact of these mechanisms, to the extent that they have one, is generally only evident after a number of years have passed and then only to the degree that a culture of intolerance for the violation(s) addressed has become apparent. Thus, at this stage, an assessment of the impact of the mandate on violence against women is less concentrated on whether or not there has been an actual reduction in the number of incidents of violence in the diverse regions of the world than it is on whether or not there is a greater awareness of violence against women as a violation of fundamental rights and the emergence of the will on the part of both governments and societies to eradicate the practice.

A review of some of the positive elements arising from the mandate of the Special Rapporteur indicates that:

- in general, the mandate has contributed to a broader understanding on the part of both governments and the non-governmental sector that violence against women is a human rights violation;
- in Latin America the reports of the Special Rapporteur have been used by various groups, individuals and academic institutions in: 1) workshops with grass roots organizations to introduce a "rights" orientation into discussions on violence in the family and community and incidents perpetrated by agents of the state as well as non-state actors; 2) training for judges, police, women's groups and legal networks; 3) courses in international law addressing the protection of women's human rights; 4) representations to members of national, provincial and locally elected assemblies; and, 5) to promote law reform to address the continuing unequal power relations between women and men;
- the work of the Special Rapporteur has helped to raise awareness of the economic causes of violence and illustrated the ways in which poverty and economic disparity are correlatives to an inability on the part of economically disadvantaged women to have effective access to justice;
- the focus given by the Special Rapporteur to the issue of violence against women migrant workers has helped bring needed attention to the issues of the duties and obligations of receiving states as well as issues

related to trafficking and forced prostitution;

- in South Asia, where few governments have ratified the International Bill of Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, and where there exists no regional inter-governmental human rights body, the mandate has provided a de facto complaints mechanism with regard to allegations of violations of women's human rights;
- in general, recommendations in the reports addressing state interventions have lent important support to efforts towards achieving domestic enforcement of women's human rights;
- in some cases, recommendations in the reports that have emphasized the need for both legal and non-legal strategies and focussed on the economic and social causes and consequences of violence against women have provided a counterweight to precipitous and badly conceived law reform initiatives;
- in South Asia, the reports have proven to be a valuable resource in terms of developing documentation and research capacities among national and local NGOs as well as governments;
- in Africa, the work of the Special Rapporteur has helped raise the issue of violence against women as an obstacle to development;
- the reports were used, in part, as a basis for women in Africa to campaign for an additional protocol on women's human rights to the African Charter on Human and Peoples' Rights;
- in the Middle East, the work of the Special Rapporteur has helped to demonstrate that violence against women is a global issue and, in some cases, led to the creation of hot-line services and consideration of the establishment of shelters for battered women, generated some coverage in the media of the issue of violence against women, encouraged opposition groups publicly to discuss the issue and led to more work being done in the areas of documentation, monitoring, law reform and assistance to women; and
- also in the Middle East, the work of the Special Rapporteur and the profile it has given to the issue of violence against women were contributing factors in the decision of non-governmental organizations and human rights activists to establish the permanent Arab Women's Tribunal on Violence against Women.¹

Not surprisingly, these and other positive aspects attached to the establishment of the mandate and the work carried out by the Special Rapporteur are balanced by a recognition that a number of problems remain and significant obstacles are still to be overcome both in terms of achieving the eradication of violence against women in all societies and regions of the world and making better and maximum use of the Special Rapporteur's work to effect the changes needed.

The factors in societies which continue to mitigate against substantive action on the issue of violence against women, and better use of the reports produced by the Special Rapporteur, include that :

1 The Arab Women's Tribunal on Violence against Women was held in Beirut in 1995; a preliminary meeting on the establishment of the permanent Arab Women's Tribunal on Violence against Women was held in December 1995.

• within the international system, there now exists the danger of "collapsing" all women's human rights into the question of violence against women;

• systems of patriarchy impede an awareness of the mandate of the Special Rapporteur and obstruct implementation of recommendations at national and grass roots levels;

• in some societies, women are still commonly perceived as the property of men;

• there remains a strong inclination on the part of governments and both state and non-state institutions to address violence against women as an exercise in "crisis management"; what is lacking is an appreciation that violence against women requires the development of systematic and long-term approaches, including the establishment of policies and legal systems that are responsive, which will endure and ultimately eliminate violence against women permanently;

• governments consistently support the principle of the equality of women and men while at the same time, with equal consistency, failing to take the measures needed to ensure that this equality is or becomes reality;

• the process of democratization under way in a number of countries, contributing to the empowerment of women, has caused some governments to take countervailing steps to ensure that women remain secondary or second-class citizens;

• bearing in mind the previous point, fear remains a constant and significant factor in preventing women from working jointly to eradicate violence against them;

• in some societies, women who seek to raise the issue of violence in family are seen as women seeking to break family ties and maximize their own sexual freedom;

• in some societies, "honour killings" are still allowed by law and in most cases the sentencing of men for acts of violence against women remains low;

• in some societies, placing women in administrative detention is the chosen means by which to protect them from their families, particularly in cases involving "honour killings";

• governments in transition to democratic systems are implementing measures to erode women's rights to freedom of expression and association and the right to seek, receive and impart information and, through these measures, thereby limiting the rights of women to participate in public life and sustaining a system in which fear prevents women from speaking openly and directly about their experiences;

• there is a direct link between economic, social and cultural rights and violence against women drawn in part from the negative impact of structural adjustment programmes, the feminization of poverty and initiatives related to development that is not yet recognized and taken into account.

Parallel to these obstacles of a societal and governmental nature, the rela-

tionship between the work of the Special Rapporteur and human rights and women's groups throughout the world remains incomplete for a number of reasons. Among them are that:

- in some areas, there is still a low awareness of the Special Rapporteur's mandate among both governments and NGOs at the national and local levels;
- use of the media to raise the profile of the mandate has not been consistent;
- significant difficulties remain in establishing a coherent approach to the issue of state responsibility and the obligations of states to exercise due diligence;
- similar difficulties remain in establishing an approach that systematically addresses the issues of the commitment of states (state accountability) and their capacity to implement the recommendations of the Special Rapporteur;
- technical difficulties remain in terms of communications, related in part to: 1) a failure to have the Special Rapporteur's reports more widely disseminated; 2) the lack of detailed summaries of the reports in a style and language that are clearer than those required for reports prepared within the UN system; 3) the continuing need for a methodology to support the systematic documentation of incidents of and conditions favourable to violence against women; 4) a lack of coherence in the NGO approach to cooperation with the mandate and dissemination of the results of the work carried out by the Special Rapporteur; and 5) a lack of adeptness in the establishment and operation of regional networks of human rights and women's rights organizations;
- to date, insufficient attention has been given to the legal aspects of cultural factors that cause or contribute to tolerance of violence against women;
- despite an increased recognition of the fact that violence against women is a human rights violation, more work needs to be done in this area;
- there remains a need to increase and strengthen the capacity of organizations at the national level to benefit from and contribute to the work of the Special Rapporteur; and
- the relationship between the Special Rapporteur and other entities within the UN system, e.g. thematic working groups, rapporteurs, independent experts and the human rights treaty bodies needs to be developed further; and the relevance of the international means and mechanisms to the situation of women at local and grass roots levels has not been sufficiently communicated and established.

On the positive side, the above points indicate that the impact of the mandate of the Special Rapporteur on violence against women has been most evident in areas such as raising the level of awareness of the issue. They also suggest that the general and field mission reports produced in the first three years have provided a framework for training in both the governmental and civil sectors as well as basic

needs in terms of law reform at the domestic level. The points also indicate, however, that the overall effect of the mandate has been compromised by persistent problems in coordination among human rights NGOs and women's organizations at the international, regional, national and local levels. Difficulties have also been encountered as a result of a lack of a well defined methodology for the documentation of violence against women, resource constraints, and the complexities inherent in a mandate that, in effect, encompasses the situation of one-half of the people in every country in the world, with all of the accompanying problems arising from the diversity and differing priorities this implies.

III. Impact of the Mandate on United Nations Agencies and Bodies

A. General Observations on the Functioning of Human Rights Treaty Bodies

Prior to the 1993 World Conference on Human Rights a comprehensive study of the functioning of the human rights treaty bodies was undertaken. The study resulted in a number of recommendations to make what was an unwieldy and, for those not directly involved in the treaty bodies, arcane system more efficient, effective and transparent. While major and even drastic reform of the treaty system has not yet been undertaken a number of changes have made the system somewhat more accessible and, to some degree, governments more accountable. These smaller reforms include that:

- the treaty bodies now accept all sources of information as potentially relevant (e.g. from NGOs and UN agencies/bodies) rather than continuing the practice of depending solely or in the main on the information provided by a government in its periodic reports;
- the Committees on economic, social and cultural rights and racial discrimination will now consider a country situation even in the absence of a State party report; this decision was taken in order to overcome the problem of the large number of overdue reports from States parties; the governments are notified of the decision to proceed and it is generally the case that a report from the government concerned is provided following notification; as a result, the absence of a report from a State party no longer means that the state of the rights set out in the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Racial Discrimination in a significant number of countries will not be reviewed on a regular basis;
- the treaty bodies have taken an approach aimed at strengthening cooperation between them and other human rights mechanisms, including the thematic and country-specific mandates established by the Commission, especially in cases and situations that call for urgent action appeals;
- the Human Rights Committee, (HRC) responsible for oversight of implementation of the provisions of the International Covenant on Civil

and Political Rights has undertaken to prepare a new general comment on article 3 which is the non-discrimination statement in the Covenant; it is the Committee's intention, through this revised general comment, to focus on equality provisions as they relate to women;

- the Committee on the Elimination of Discrimination against Women (CEDAW) has appointed individuals from among its members to follow the work of the other treaty bodies; the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have appointed one of their members to follow closely the work of CEDAW;
- the 1995 meeting of the chairpersons of treaty bodies endorsed the recommendations of the expert group meeting on the integration of gender perspectives into the UN human rights activities and programmes;² and
- the 1996 meeting of the chairpersons of the human rights treaty bodies supported the recommendation that CEDAW be moved from New York to Geneva to facilitate coordination with and eliminate the geographical separation and isolation of CEDAW from the work of the five other human rights treaty bodies.

These reforms and decisions by the treaty bodies are helpful but to date the approach taken by treaty bodies to the questions of violence and discrimination against women has been uneven.

On the positive side, in 1996 the Human Rights Committee did include in its concluding observations on Guatemala comments on violence against women as it relates to domestic violence and sexual harassment and, with regard to Zambia, violence against women arising from traditions and customs that discriminate against women. The Committee on Economic, Social and Cultural Rights (CESCR) has revised its reporting guidelines for states to require gender-specific information, such as measures by the state to protect women migrant workers. The CESCR, in concluding observations on El Salvador welcomed the establishment of a hot-line for victims of violence, noting that its work included providing victims with psychological and social assistance. The Committee on the Rights of the Child (CRC) has routinely taken with States parties the question of sexual and other abuse of girls and held a joint meeting with CEDAW in Egypt in November 1996. One of the items on the agenda of that meeting was protection against domestic and other forms of violence, sexual exploitation and trafficking.

An indication of the distance yet to be covered in order to ensure that women's human rights are fully integrated into the work of the treaty bodies, however, may best be found in two areas. First, is the decision of the Committee on the Elimination of Racial Discrimination (CERD) not to revise its reporting guidelines to require States parties to provide gender specific information because, in CERD's view, it is "CEDAW's job to deal with women".³ Second, the representation of women on treaty remains inadequate. According to the Secretary-General's report of 20 December 1996 the numbers are:

² Report of the Expert Group Meeting on the Development of Guidelines for the Integration of Gender Perspectives into United Nations Human Rights Activities and Programmes, (Geneva 3-7 June 1995) E/CN.4/1996/105.

³ Comment made at the seventh meeting of chairpersons of all treaty bodies. See Anne Gallagher, "Ending the Marginalization" in *Human Rights Quarterly* Vol. 19 (1997), p. 304.

Committee against Torture.....	1 of 10 members is a woman
Economic, Social and Cultural Rights.....	2 of 18 members are women
Racial Discrimination.....	2 of 18 members are women
Rights of the Child.....	6 of 10 members are women
Human Rights Committee.....	4 of 18 members are women
Discrimination against Women.....	All members are women

These numbers indicate that the goal stated at the Fourth World Conference on Women (Beijing, September 1995) as a minimum, a 60/40 representation of men to women within the UN remains elusive. Far more so is the general goal of the United Nations to achieve a 50/50 ratio of representation system-wide. These numbers also suggest that to the extent that the greatest representation of women is on CEDAW and the CRC a general view persists in which the capacity of women to deal with rights and law is still seen to relate primarily to rights and law with "social content" and far less so to rights and law of a civil and political nature.

B. Committee on the Elimination of Discrimination against Women

Effective action on violence against women under the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention) has not yet been consistently achieved. In part, this reflects the fact that the Women's Convention does not explicitly define violence as a form of discrimination. The adoption by CEDAW of General Recommendation No. 19, in 1992, however, did provide an important framework and a definition of violence through which the issue can be addressed. This year, CEDAW has considered revising General Recommendation No. 19 to incorporate into those elements in the Beijing Declaration and Platform for Action that relate to violence against women. The obstacles to progress, therefore, are now less a question of inadequacies in the Convention than they are administrative and/or technical.

The significant backlog of reports from States parties still means that there can be a delay of up to three years between the time a report is submitted by a government and considered by the Committee. This delay often means that the information provided by a government is out-of-date in at least some respects and that the focus of the report may or may not accord with priority areas and questions identified by the Committee as a basis for discussion. A decision by a government to provide supplementary materials does not necessarily mean that issues of importance, such as violence against women, will be dealt with in depth and effectively. Thus, in the relationship and dialogue between governments and CEDAW there remain serious obstacles to a detailed and considered review of violence against women. These difficulties

also mitigate against formulation of substantive and comprehensive recommendations from the Committee in terms of measures governments can and should take under the Women's Convention to eliminate violence against women.

An example of the effects of time and administrative constraints can be found in the concluding observations and recommendations made by CEDAW following consideration of Canada's reports in 1997. The Committee noted that violence against women was increasing in Canada, as were sexual exploitation of women and girls and trafficking in women, despite measures and laws to address these issues. The Committee merely recommended, however, that, in the case of Canada, the government continuously monitor the measures taken to combat violence against women and evaluate their impact on long-term behaviours and attitudes. This recommendation and others of its kind in response to reports from other States parties are too general in nature to provide a framework by which either CEDAW or NGOs can actually measure compliance by the state with its obligations under the Women's Convention.

Bearing in mind these kinds of difficulties and their implications in terms of CEDAW's overall effectiveness in dealing with violence against women, the Committee has undertaken several initiatives recently to improve relations and establish a stronger basis for cooperation with other sectors of the UN. For example, with:

- the World Health Organization, on the basis that violence against women is, properly, a health issue;
- the Office of the High Commissioner for Refugees and the International Organization for Migration to address the needs of and violence against refugee women; and
- UNICEF, to address the protection needs of girls.

The Committee has also requested that the High Commissioner for Human Rights facilitate the presence of the Special Rapporteur on violence against women at all of CEDAW's sessions with the possibility that time in the agenda of each session can be set aside for discussion of issues of mutual concern, such as effective implementation of General Recommendation No. 19. CEDAW has also asked the High Commissioner for Human Rights to consider facilitating the participation, as appropriate, of one of the Committee's members in field missions undertaken by the Special Rapporteur.

C. Human Rights Committee

In terms of women's human rights generally and violence against women specifically, there are a number of articles in the International Covenant on Civil and Political Rights under which these issues can be systematically

addressed by the Human Rights Committee. For example:

- article 2 sets out the principle of non-discrimination based on sex;
- article 3 establishes the obligation of States parties to ensure to women and men the equal right of enjoyment of the rights established by the Covenant; and
- article 26 which establishes the right of equality before the law.

In General Comment 4 of 1981 on article 3 of the Covenant, the Human Rights Committee stated that not only that one but also articles 2.1 and 26 require "not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights". The Committee further stated that the reports submitted by governments should not only deal with purely legislative measures of protection but also those that have been or are being taken to fulfil the precise and positive obligations under article 3.

There is a general impression that, while the Human Rights Committee has made some effort specifically to examine the questions of State party compliance with obligations related to women's human rights and state actions to combat violence against women, the approach has been inconsistent and significantly lacking in some instances. This view is accurate but it does not mean that the Covenant fails to provide the Committee with the basic requisites for systematic consideration of women's civil and political rights and violations arising from violence against women. For example:

- under article 4, questions related to the rights to life and personal integrity can be addressed through examination of the positive measures taken by states to protect women from rape and violence in situations of major internal or international conflicts;
- article 6, (the right to life), can be used to review measures taken by states to: reduce maternal mortality due to clandestine abortions; implement campaigns for family planning; ensure availability of contraceptives; carry out education programmes on sexuality; introduce and/or sustain services dedicated to women's health problems, including areas related to women's reproductive role; protect women from the effect of cultural and religious practices such as sati, the justification of the murder of a wife, daughter or sister through the defence of honour and stoning, as one means to carry out a death sentence against a woman; and, decriminalize abortion, particularly in cases where the pregnancy threatens the life of the mother;
- article 7 (torture or cruel, inhuman or degrading treatment or punishment), can be invoked in cases related to domestic violence and the failure of the state to exercise due diligence in the prevention of such violence against women, forced abortion and genital mutilation;
- article 8 (slavery, servitude and forced or compulsory labour) goes directly to the core of issues arising from trafficking in women, disguised forms of slavery that are being increasingly documented in terms of the situation of women migrant workers and foreign domestic workers and practices related to religion, such as devdasi;⁴

⁴ Literally translated, devdasi means "slave to the god". The practice was most common in southern India and involved a family donating a daughter to the temple. This young woman then performed ritual dances and was, for all intents and purposes, a slave or servant to the temple. At its worst, a devdasi became the sexual slave of the priests. India outlawed the practice of devdasi in 1997 but did not establish rehabilitative and education programmes for the young women who have been evicted from the temples. In general, former devdasis are scorned by their communities and suffer extreme neglect because of their former status as sexual slaves.

- article 9 (personal freedom) can serve as the means to consider previously unexplored issues such as the power of husbands to forbid wives to leave the home without permission and prohibitions on women leaving the country without permission;
- article 10 (treatment of persons deprived of liberty) carries with it the scope to consider questions such as the separation of female from male prisoners, whether exists a stipulation that only women guards are posted in the women's section of prisons, whether girls are separated from women in prisons and whether within prisons women and men have equal rights (e.g. conjugal visits);
- article 12 (freedom of movement) provides the basis on which a number of issues may be considered, including any prohibitions on adult women, both married and unmarried, from leaving the country and the right of married women to choose their residence;
- article 14 (equality before the courts and tribunals) establishes the basis upon which issues such as direct access to justice for women without need of permission of husbands or fathers may be considered, as well as the absence or presence of laws ensuring a woman's access to a lawyer in cases of litigation against the husband;
- article 16 (right or recognition as a person before the law) may be used to ensure that legal regimes ensure that women have full legal personality, whether married or not;
- article 17 (right to privacy) supports consideration of issues such as differences in the penalty of rape based on the "honesty" or civil status of the victim, prostitution and presumption of innocence and decisions relating to granting a woman custody of a child if these decisions are based on rules or norms that are different for women and men; the article also provides the scope for consideration of issues related to privacy and reproductive health and life such as the number and spacing of children as well as associated concerns such as a requirement that a husband's authorization be given for sterilization;
- article 23 (equal rights in marriage) may be used to review areas of law and practice such as patrimonial regime in marriage, equal rights in requesting a divorce and initiating proceedings are the reasons for requesting a divorce similar for women and men and whether or not women have the same powers as men in deciding on, for example, their children's upbringing, religion and schooling;
- article 24 (rights of the child) implies equality for girls in areas such as education, nutrition, food, health care and the definition of the legal age of marriage; and
- article 26 (equality before the law) provides the basis on which a state may be questioned as to whether or not a review of legislation has been conducted, and reforms undertaken where necessary and appropriate, to eliminate discrimination against women in all areas (e.g. social benefits, property rights, marriage, education, etc.).

Bearing in mind the comment above that the approach of the Human

Rights Committee to women's human rights and violence against women has been inconsistent, it should nonetheless be recalled that the Committee has taken up these issues on occasion. For example, general concerns related to the *de jure* and *de facto* situation of women were raised during consideration of the report of Sweden, Estonia, Switzerland, Gabon and Georgia. The issue of violence against women within the family has been taken up by the Committee during consideration of the reports of Mauritius, Guatemala and Brazil. Genital mutilation was addressed during consideration of Nigeria's report. The application of customary laws relating to personal status, marriage, divorce and inheritance rights was considered by the Committee during reviews of reports from Mauritius, Zambia and Nigeria. During examination of the report from Georgia, attention was given to the issues of maternal mortality, abortion and health care. The problem of trafficking in women was considered within the review of the report of Portugal (Macao). And, finally, the Committee's examination of the report by the government of Peru included consideration of legal provisions that discriminate against women, such as the law that eliminated legal responsibility of rapists who married their victims and, in the case of gang rape, the provision that all of the men involved would escape legal responsibility if one of them married the victim.

On the specific question of whether the mandate of the Special Rapporteur has had any impact on the work and approach of the Human Rights Committee, the answer is no. This is the result of a number of factors. Three may be cited here. The first is the lack of coordination among and between the various sections of the UN's human rights programme. An example of the failure to coordinate more effectively can be found in the fact that the Special Rapporteur's report on violence against women in Brazil was not referred to the Human Rights Committee prior to or at the time that the Committee considered the government's report. The second is the fact that the Committee has not yet, for itself, devised a systematic approach either to issues arising from discrimination against women and the violence this may cause. And the third is that the Committee does not seem to have insisted firmly enough that the reports by governments include gender-disaggregated information to assist in the consideration of both women's human rights and violence against women.

D. Division for the Advancement of Women

The Division for the Advancement of Women (DAW) serves as the secretariat for both the Commission on the Status of Women and CEDAW. As a result of agreements reached by governments at the World Conference on Human Rights and the Fourth World Conference on Women, DAW now serves as the focal point for the mainstreaming of a gender perspective throughout the UN system.

As a result of this increased coordinating role, the relationship between DAW and the human rights treaty bodies has been strengthened. It may be

noted, however, that an approach adopted in 1995 and 1996 by which the Division tried to provide country-by-country information to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights was discontinued because the work was labour intensive and in some cases led to information being provided that was not actually required by the Committees.

The revised and more focussed approach now taken to improve coordination and raise awareness in the treaty bodies of information on women's human rights and violence against women includes provision by the Division of:

- the concluding comments of CEDAW on countries scheduled for consideration by another treaty body;
- relevant information from the thematic reports prepared for the Commission on the Status of Women;
- relevant information from the national action plans governments have drawn up following the Fourth World Conference on Women;
- analysis of treaty norms and identification of areas where, depending on the treaty body concerned, further norms need to be developed (e.g. input into the process of drafting optional protocols to the International Covenant on Economic, Social and Cultural Rights and the Women's Convention); and
- observations and analysis to assist the treaty bodies in the development of general comments (e.g. input to the Human Rights Committee for consideration during revision of the general comment on article 3 of the ICCPR).

The Division has also been involved in convening meetings for the benefit of the members of the human rights treaty bodies. In this regard, it may be noted that DAW, in cooperation with the Commission on Human Rights and the UN Population Fund, held a roundtable on "Human Rights Approaches to Women's Health with a focus on Reproductive and Sexual Health Rights". The Division was also instrumental in ensuring that the 1997 meeting of the Chairpersons of the treaty bodies included in the discussion the issue of HIV/AIDS and how this can be addressed in their work.

E. Office of the UN High Commissioner for Refugees

It is estimated that at present the Office of the UN High Commissioner for Refugees (UNHCR) is responding to situations involving some 26 million people with women accounting for 75 per cent of those who are considered refugees or among the internally displaced.

In considering gender-based persecution and the right of asylum for women, in recent years some governments have expanded the grounds on which asylum may be requested. Some governments of receiving countries will

now, to a greater or lesser degree, consider practices directed against women such as harsh or inhuman treatment for having transgressed social norms, sexual violence, genital mutilation, coercive family planning, homosexuality, and domestic violence, particularly where any or all of these practices are either condoned or sanctioned by the state.

The situations of refugee and internally displaced women is generally considered under the "particular social group" provision of the 1951 Convention on the Status of Refugees. The debate arising from this approach has centred on whether a woman belongs to a particular class or social group and therefore is entitled to the protections afforded under the Refugee Convention. In an effort to clarify the bases on which women may request, in July 1991 the UNHCR released Guidelines on the Protection of Refugee Women which stress that women "fearing persecution or severe discrimination on the basis of their gender should be considered a member of a social group for the purposes of determining refugee status. Others may be seen as having made religious or political statements in transgressing the social norms of their society." Despite this clear determination by the UNHCR, there remains significant doubt, particularly in receiving countries, as to the validity of gender based persecution as a legitimate basis for granting asylum. The reluctance to embrace fully gender based practices as a form of persecution is based on a number of considerations, not least of which are political expediency and a supposed concern over internal economic conditions and a reluctance to assume additional responsibilities related to ensuring the well being of aliens.

In light of the difficulties encountered in having the right of asylum fully implemented for women, the process of devising programmes to assist refugee and displaced women through the UNHCR is increasingly taking into account a number of factors, including violence and especially sexual violence. Among them are:

- in areas of conflict, a policy of deliberately and systematically infecting women with HIV/AIDS through sexual violence;
- the systematic use of rape and sexual violence as an instrument of war, a practice which is now recognized as a war crime;
- the fact that women subjected to rape are often stigmatized and ostracized from their families and communities;
- the concern of women victims and survivors that the perpetrators of such violence, who deliberately targeted them, must be held accountable and not benefit from impunity;
- sexual slavery in the context of war; and
- the need to provide restitution, compensation and rehabilitation.

The response of the UNHCR to the situations in the former Yugoslavia and Rwanda, for example, has been to implement projects aimed at assisting women victims of these and other practices in areas such as economic self-

reliance, legal assistance, reproductive health, shelter and through community based psycho-social programmes.

Other areas of concern for the UNHCR, to the extent that internal practices may be recognized by the international community as a legitimate bases for asylum claims are cases arising from the "crime of honour"⁵ and trafficking in women explicitly for the purpose of sexual exploitation.

In addition to the programmes cited above to assist women especially in the former Yugoslavia and Rwanda, the UNHCR has taken a number of steps to address more generally the patterns of violence and the protection needs of refugee and internally displaced women. These include:

- appointment of a Reference Group on Refugee Women to oversee, monitor and support implementation of the Beijing Platform of Action;
- creation of the post of Senior Coordinator for Refugee Women with responsibility for mainstreaming into the UNHCR's programmes the needs of refugee women and a gender perspective;
- appointment of five Senior Regional Advisors for Refugee Women to assist in implementation of a field monitoring programme related to the situation of women;
- appointment of local focal points for refugee women in all field offices to strengthen the field system of delivery of assistance;
- adoption of the UNHCR Policy on Refugee Women with the specific purpose of mainstreaming the needs and situations of refugee women in all protection and assistance programmes;
- development of guidelines on the protection of refugee women and sexual violence against refugees that include strategies for prevention and response;
- development of an inter-agency manual on reproductive health and manuals with subjects such as the mental health of refugees;
- organization of a symposium on gender based persecution in February 1996 which resulted in several countries of asylum developing guidelines to assess gender based persecution;
- priority recruitment of women for external job vacancies;
- gender analysis training of all professional field staff to ensure gender sensitive planning in programming; and
- creation of special initiative funds such as the Bosnia Women's Initiative and the Rwanda Women's Initiative, with the main objective to assist and support women who are the survivors of violence.

⁵ The "crime of honour" refers to the expectation in some societies that the father or elder brother must (or will) kill a woman who becomes pregnant as a result of an extra-marital relationship or rape or incest in order to save family and community honour.

In addition to these initiatives it may be noted that the UNHCR maintains several special programmes to assist women. One such initiative is resettlement to ensure the protection of a woman's well being and continued safety in a country of asylum, particularly in cases where there exists threats of rape, sexual violence, abduction, torture and commercial sexual exploitation if involun-

tary return to country of origin is carried out. Another approach is facilitation of resettlement through the Women at Risk Programme which is of particular benefit to single mothers or women accompanied by men who are unable to support them or their children. The rationale for these categories of special consideration is based on recognition that:

- for women considered to be particularly at risk in the country of asylum, resettlement is or may be the best means to prevent further physical abuse, victimization or recurrence of other forms of abuse;
- there is a need to enhance resettlement eligibility for refugee women who would otherwise be considered ineligible under regular resettlement criteria and facilitate priority acceptance and accelerated departure from areas of threat and risk; and
- the need to ensure that women receive specialized care, if needed, and intensive support upon arrival in their country of resettlement to assist them in socio-economic integration and self-sufficiency.

The international community through forums such as the World Conference on Human Rights and the Fourth Conference on Women has been reasonably good at expressing concern about the situation of women worldwide. The governments making these statements at these gatherings, however, have proven far less adept at instituting and maintaining policies favourable to the well being of women and, particularly, refugee and internally displaced women. In this regard, it may be noted that the right to asylum has become an increasingly contentious issue and one which the UN High Commissioner for Refugees has vigorously taken up over the past few years.⁶ A significant factor in the decision by the High Commissioner and the UNHCR generally to give priority attention to the question is that refugees, who are primarily women and children, are increasingly seen by receiving countries as economic, political and environmental burdens as well as potential security threats.

Endnote

It is acknowledged that the task of mainstreaming a gender perspective into the UN system-wide is enormous. The difficulties encountered arise from a number of factors not least of which is that the actual requirements of the work are labour intensive and cannot be adequately or fully supported with the resources presently available. A second consideration arises from the fundamental assumption from which the United Nations grew, namely that it is the natural right of men to define, manage and control social and governmental institutions and the natural role of women to be passive observers of the affairs of men. The debates prior to the World Conference on Human Rights and the Fourth World Conference on Women, as well as the decisions taken at those international meetings, signalled the UN's intent, as well as that of governments worldwide, to modernize both the institution and attitudes and practices directed at women. To the extent that the treaty bodies have modified

⁶ The High Commissioner for Refugees, Sadako Ogata, addressed the 1997 session of the UN Commission on Human Rights. The focus of her statement was on the issue of asylum. For a summary of this statement, see Jan Bauer, "Report of the 53rd session of the UN Commission on Human Rights" at <http://www.hri.ca> or <http://www.unhcr.org/article19/>.

their approaches and to the extent that the initiatives of the Division for the Advancement of Women have been welcomed, some progress has been made. And, to the extent that the Office of the UN High Commissioner for Refugees has increasingly placed an emphasis on the protection and rehabilitative needs of refugee and internally displaced women, progress in this area has been made. That the distance yet to travel, however, far exceeds any progress made remains apparent.

IV. Economic, Social and Cultural Rights and Violence Against Women

Since 1993 much greater attention has been given to issues related to economic, social and cultural rights than was in the past. This attention is most evidenced by the decisions of the UN Commission on Human Rights to establish working groups on the right to development and structural adjustment programmes. The most substantive work, however, has been undertaken by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Since 1994 the Sub-Commission has conducted studies related to economic, social and cultural rights, including in the areas of the right to housing, human rights and income distribution, human rights and extreme poverty, impunity for perpetrators of violations of economic, social and cultural rights, and the activities of transnational corporations and their impact specifically on labour rights and, generally, all other human rights.

While these initiatives by the Sub-Commission are welcome, there are a number of characteristics in the approaches taken that have mitigated their relevance to an inclusive consideration of these rights and subjects. These characteristics include that:

- the assumption that these rights are gender neutral;
- these rights primarily concern the collective right of peoples;
- the role of women is limited to that of mother to the extent that emphasis is given to women's concerns are often expressed in terms of poverty and child poverty;
- violations of these rights is not placed within the context of their interdependence with human rights generally and specifically left outside the context of women's human rights in terms of non-discrimination, equality and the economic, social and cultural rights of women; and
- a framework based on the protection, promotion and right to restitution for violations of human rights, with regard to the obligations of states, does not specifically take into account factors affecting women in relationship to their enjoyment of economic, social and cultural rights.

These shortcomings in the approaches taken in these studies are accompanied by a failure in other forums to work from a concept of economic, social and cultural rights not as rights in themselves but rather indicators of social development. This view eliminates from consideration the identification of violations of these rights, qua rights as well as those responsible for violating rights rather than principles outside a legal framework.

The impact of this explicitly incomplete approach to economic, social and cultural rights, is to perpetuate the failure of the international human rights system to make real the principles of universality and the interdependence of human rights, particularly with regard to the rights of women. Similarly, the approach mitigates against greater progress being made in the area of integration of a gender perspective system-wide in the UN and especially within the UN's human rights machinery. And, further, there remains a failure to give adequate attention to the relationship between economic, social and cultural conditions for example, poverty, inadequate health services and discrimination in education to the frequency, nature and significant underlying causes and consequences of violence against women.

V. Methodology and Documentation

The success of women in raising the profile of the issue of violence against women has demonstrated that the capacity to document violations of women's human rights has existed for some time and can be used to provoke the international community into taking broadly conceived actions, or, actions based on principle. Two such actions were the adoption of the Declaration on the Elimination of Violence against Women and the appointment of the Special Rapporteur on violence against women. As outlined above, these two avenues for establishing further the normative framework in which the issue of violence against women can and should be addressed are accompanied by an increased attention given to the issue through other channels, including CEDAW's General recommendation No. 19, the beginning of a more systematic and substantive approach within the other human rights treaty bodies, the call by the UN Commission on Human Rights for all thematic and country mechanisms to give particular attention to women's human rights and violence against women and efforts underway to initiate and/or inter-agency cooperation within the UN system. The priority for women now is to build on the documentation capacity that already exists and devise a system that may be described as more rigorous, detailed and comprehensive in order to operationalize accountability in a number of areas. These areas may be described as:

- state accountability: under international standards (treaty bodies), through thematic mechanisms, through case studies and through ensuring

that nationally based groups and grass roots organizations are involved in the process so that they may hold their own governments accountable on an internal basis;

- UN accountability: in the areas of standard-setting such as the elaboration of optional protocols to the Women's Convention, the Convention against Torture and the Convention on the Rights of the Child, provision of adequate resources to accomplish the tasks identified and defined, further development of programmes and the means of delivery by agencies and bodies within the UN, a commitment to set aside inter-agency squabbling and the emphasis on "first to the post" in favour of unified action, a move away from prescriptive to responsive approaches, reduction in the bureaucracy and elimination of redundancies in the system, and an affirmative action programme to restore to people at the national and local levels confidence in the UN system; and

- NGO accountability: related to development of a more coherent methodology, delivery of information to relevant mechanisms and organs in an "actionable form", consolidation of information, more active networking, development of an approach based on a division of labour; efforts to increase cooperation between international human rights and development NGOs and national or local NGOs and women's groups, training to make the international system more comprehensible and transparent, facilitation of information and technology transfers and compensatory programming to overcome inequalities in information technologies, such as access to the Internet and development of an approach to a rights, rather than "needs", vocabulary vis-à-vis major development organizations and agencies.

The obstacles to improvements in methodology and documentation and, thus, to achieving greater accountability at various levels, are several. Chief among them remains the fact that violence against women does not readily fit into the current human rights paradigm, particularly in areas such as violence in the community and the family. This is true because of the principle in international human rights law that only states can violate human rights and all other acts causing harm are criminal and private or personal in nature. The emphasis in terms of non-state actors such as those who commit acts of violence against women in the community or family has been on the state's obligation to exercise due diligence and to put in place a legal system through which such crimes can be investigated and prosecuted.

In order to ensure a global approach to violence against women, a number of questions have to be addressed. Not least among these questions is what is meant by a "methodology for documenting violence against women"? This can and should refer to many things, including events- and standards-based data and methods of data collection. Other important questions are: What is to be done with the information collected? How is it used? How is it channelled? The answers to the questions may be more easily found if it is borne in mind that reports are not an end in themselves but a vehicle, therefore what is done with the reports and the information they contain will determine their effectiveness.

The more rigorous documentation of violations of women's human rights and the incidence of violence against women in every society, essentially requires the development of a basic framework for gender-sensitive research and analysis that should include, for example, some or all of the following:

- the circumstances of the violation: political and legal framework, social and cultural norms, economic circumstances and, where relevant, armed conflicts;
- a description of the activities resulting in violations: activities on behalf of relatives, for women's human rights, related to environmental and community concerns, trade-unionism and household activities;
- the identity of the victim(s): gender as the cause of the violation, family relationship as the cause of violation, law or customs as the cause of violations (crimes of identity);
- the nature of the harm;
- the consequences of the violation: medical, social, cultural and economic; and
- the nature and accessibility of remedies: medical, legal, etc.

The establishment of a methodology that is, more or less, followed by both human rights and women's organizations worldwide will create opportunities for more effective action on the issue of violence against women and use of the documentation generated more broadly within the international system. Thus, if the existing capacity is developed along the lines suggested above, a number of new approaches could be taken. These include:

- initiatives intended to reinforce the "rights character" of economic, social and cultural rights, perhaps through particular attention being given by the Special Rapporteur to one or two rights where the direct link between violations of them and violence against women is clearly drawn;
- systematic consideration of the impact of the policies and programs of the international financial institutions on the economic, social and cultural rights of women and how these policies and programs may either directly or indirectly have an impact on the incidence of violence against women;
- systematic documentation on the impact of transnational corporations and the economic, social and cultural rights of women and the link between abuse of and discrimination against women in areas such as labour rights and violence against women;
- systematic documentation of violations of economic, social and cultural rights to ensure that the perpetrators of these violations are held to account within a constitutional and national legal system that accords the rights status in law;
- diversification of the approach to broaden the reach of documentation and move the work beyond the confines of the UN Commission on Human Rights to include more systematically relevant treaty bodies;

- development of companion materials to case iterations and reports that can be used to cultivate a greater gender competence within the UN's human rights Secretariat;
- a more systematic integration of the work carried out in UN human rights field operations with that of the Special Rapporteur on violence against women, particularly with the view to ensuring that on-site information collected through field operations is more systematically provided to the Special Rapporteur for consideration in preparation of her reports;
- development of a campaign on the positive obligation of the UN's development and humanitarian relief agencies to address violence against women, including through a critical approach issues such as poverty, underdevelopment, inequality and violence against women from a rights rather than "needs" perspective; and
- development by NGOs of an approach which actively incorporates data published by UN agencies and bodies that are not traditionally seen as "rights" bodies (World Health Organization) to emphasize the rights nature of the issues and problems these agencies address and the impact of their work on women's human rights and violence against women.

Bearing in mind the above, the methodology and documentation needs that were identified at the time the Commission on Human Rights established the mandate of the Special Rapporteur remain current. These address three areas. First, there remains a need to prepare guidelines for governments, inter-governmental agencies and NGOs on what kind of information is needed and in what form it should be presented. Second, in order for the documentation capacity to increase, it is necessary for skilled NGO human rights documenters and monitors to provide training and practice to individuals and organizations with less experience in this area. And third, a more systematic approach needs to be developed so that compliance by the state with international obligations can be more effectively monitored and findings consistently reported to the Special Rapporteur so that failings may be taken up directly with the government(s) concerned.

VI. Conclusion

In the next three years of the mandate on violence against women, a number of approaches and themes remain to be developed. Among those identified by women themselves are:

- the possibility of a separate report on the economic and social policies of states and violence against women;
- development of an expanded definition of violence against women to incorporate the issue of state violence against women, beyond the context of armed conflict, as evidenced in structural adjustment policies and deficit reduction plans that have a disproportionate impact on women;

- the incidence of violence against women committed by staff and members of UN agencies and field operations, including peacekeeping missions;
- the possibility of a report based on a comparative analysis of criminal justice systems in terms of how they work and their effectiveness in combatting and/or eradicating violence against women;
- development of the practice of in-country visits to include joint missions with other thematic and/or country rapporteurs and/or members of treaty bodies;
- continued examination of certain forms of violence against women, especially trafficking in women, domestic violence and violence in the context of armed conflict;
- development of an approach to bridge the gap between empirical data and information on legal standards, with an emphasis on an approach to produce the empirical data now needed;
- initiatives independent of the Special Rapporteur by regional, national and local NGOs to network more effectively and adopt a more coordinated approach to assist the Special Rapporteur;
- the need to ensure that war crimes and crimes against humanity that are specifically directed at women are included in the statute of the international criminal court;
- the need to consider the ways and means to establish regionally, nationally and locally witness protection and legal assistance mechanisms for women victims of violence seeking to testify before an international tribunal or to press a case in national or state courts;
- an emphasis on the need to ensure that national governmental initiatives such as truth and reconciliation commissions intended to facilitate a transition to a democratic form of government include justice and exclude impunity for perpetrators of violations of human rights, including violence against women;
- improvements in the approach taken and regularity in the provision of gender training throughout the UN system; and
- a commitment from the UN to meet the minimum of a 60/40 representation of men to women in appointment and hiring practices as set out in the Beijing Platform for Action and, ultimately, the 50/50 representation stipulated elsewhere in the UN's operating principles.

The attention given by women to issues related to the integration of a gender perspective system-wide in the UN, the need for training on gender issues and the potential impact of reform of the UN system in terms of its capacity to deal more effectively with issues of particular importance to women clearly illustrates that for women the question of their human rights is not and may not be viewed only from the perspective of violence against women. It also clearly points to the fact that violence against women is often the end result of other violations of women's human rights, many of which arise from discrimi-

natory policies, laws and practices that do not conform with international standards. Equally, these violations arise from the failure of states to exercise due diligence as well as their continued propensity to resort to arguments based on various forms of historical, cultural and political relativism.

As the work of the Special Rapporteur on violence against women proceeds, it is particularly important in 1998 for women not only to celebrate the 50th anniversary of the Universal Declaration of Human Rights but to point out that for the overwhelming majority of women worldwide the basic rights in the Declaration remain unrealized. Parallel to this consideration, there is a special task for women in 1998, namely to ensure that the five-year review of the Vienna Declaration and Programme of Action (VDPA), which gave rise to many of the positive initiatives now underway, does not erode the basic strengths in the VDPA and, further, builds on those strengths to ensure that greater progress is made.

Annex I:

Letter addressed to the High Commissioner for Human Rights

Participants at the NGO expert meeting in Montreal agreed that a letter should be sent to Mary Robinson, the new High Commissioner for Human Rights, outlining areas of concern and making recommendations for further action the High Commissioner should take to ensure that women's human rights are systematically taken into account and violations addressed. The following is the text of the letter that was sent.

Dear High Commissioner:

On behalf of the International Centre for Human Rights and Democratic Development, I want to extend to you our congratulations on your appointment as UN High Commissioner for Human Rights and to say that we look forward to continuing the cooperation with the Office of the High Commissioner that was developed during Mr Jose Ayala Lasso's tenure.

I am writing to you today to bring to your attention concerns that were emphasized during an NGO meeting of experts hosted by the International Centre on 4 and 5 September 1997, in Montreal. The main purpose of the meeting was to assist the Special Rapporteur on violence against women and to suggest priorities for the next three years of her mandate as well as to discuss ways in which NGOs and women's organizations around the world can further support her in her work. Reflecting an interest that is shared by a large part of the human rights community dealing with issues related to women and their rights, during discussions a number of participants referred to the priority the United Nations has attached in recent years to the integration of a gender perspective system-wide and efforts made, to date, to ensure that a gender perspective is developed and implemented in all of the UN's human rights activities and programs.

The following points were raised during discussions and, again, reflect concerns shared by a wide constituency.

1. The failure to integrate a gender perspective

While acknowledging that references to the situation of women are more consistently included in the reports of such mechanisms as the human rights treaty bodies and thematic and country mandates, the content of these references remains unsatisfactory in a number of regards. The following are but four examples:

- In many cases, the references are limited to statistical data and do not include analysis or commentary on the conditions and factors which lead to violations of women's human rights. The 1996 report of the Working Group on Arbitrary Detention, E/CN.4/1996/40, is a good instance with its general note that 17 of 829 cases involved women and then, the shocking statement that "Although detentions of women have been reported to the Working Group, it is not aware of cases in which a person was deprived of liberty on account of being a woman." In response, the Working Group may be asked to provide information on the cases of detention of men solely on the account that the victims are men.
- In a number of instances, there remains a strong tendency to include consideration of the situation of women under a general heading of "vulnerable

groups" despite repeated and strong representations by women that more than one-half of the world's population cannot, by any definition, be considered a "group".

- At the sixth meeting of the chairpersons of treaty bodies in September 1995, the meeting urged treaty bodies to consider how to incorporate the recommendations of the July 1995 Expert Group Meeting on guidelines for integration of a gender perspective. Despite the endorsement of the chairpersons of treaty bodies of the recommendations from this expert meeting, the Committee on the Elimination of Racial Discrimination decided that its guidelines for the preparation of State party reports did not need revision, partly on the basis of the Chair's view that it is CEDAW's "job to deal with women". This comment by the CERD Chairman was made at the seventh meeting of the chairpersons of treaty bodies.

- And finally, women's groups and a significant number of human rights NGOs remain convinced that there is a strong correlation between the chronic under-representation of women as special rapporteurs, representatives, experts and members of working groups and treaty bodies and the failure to address women's human rights in a comprehensive and substantive way. For example, only one of ten members of the Committee against Torture is a woman; only two of ten members of the Intergovernmental Group of Experts on the Right to Development are women; and, as of 1 October 1997, women have been appointed to only five of the 30 of the thematic and country mandates of the Commission on Human Rights and neither thematic working group is chaired by a woman.

2. Recommendations to integrate a gender perspective

Participants at the meeting in Montreal referred to the guidelines that were developed in July 1995 (E/CN.4/1996/105) and noted resolutions of various UN bodies endorsing these guidelines (e.g. UNCHR 1997/48, op. 5; UNCHR 1997/43, op. 7; CSW 1997/6, op. 17). Participants reaffirmed their support for these recommendations, including that:

- the language used in the formulation of new human rights instruments be gender inclusive;
- gender-disaggregated data be identified, collected and used by UN human rights bodies, governments and other international institutions and that a gender analysis be applied to monitoring and reporting;
- all bodies in the UN system revise their working methods to incorporate a new approach responsive to the need for a gender-sensitive interpretation of all human rights mechanisms;
- all training materials and information published by the Centre for Human Rights (Office of the High Commissioner for Human Rights) be reviewed and revised where necessary to include a gender-sensitive perspective;
- all activities related to the UN's Decade for Human Rights Education be gender sensitive and that special attention be paid to women's human rights and to teaching women about their human rights;
- training be provided to all management officials and staff members of the Office of the High Commissioner for Human Rights, as well as other personnel involved in the UN's human rights activities, in the recognition and application of gender-sensitive perspectives to the promotion and protection of women's human rights;
- more coordination on women's human rights be implemented through the appointment of a liaison officer in each branch of the Office;
- the High Commissioner for Human Rights promote system-wide coordina-

tion and collaboration on women's human rights, including by promoting a gender perspective in, inter alia, peace-keeping operations and management, humanitarian assistance, refugees, development, economic policy and planning, reproductive health services, labour and education;

- the Office of the High Commissioner for Human Rights cooperate in efforts to mainstream women's human rights with other UN bodies such as the CSW, DAW, CEDAW, UNIFEM and INSTRAW; and
- steps be taken by UN bodies and states parties to ensure equal representation of women and men — at minimum, according to the 60/40 formula agreed in Beijing and, at best, according to the current 50/50 policy of the UN.

3. Proposal for the establishment of a Task Force on Gender

The meeting in Montreal agreed that, in order to achieve more consistent action on these and other recommendations, a gender policy task force be established, headed by the High Commissioner for Human Rights and including representatives of the treaty bodies and extra-conventional mechanisms, relevant UN agencies and perhaps NGOs. The mandate of the task force should be to establish a framework for a gender policy statement that you, as High Commissioner for Human Rights, would launch. Development of such a policy statement would correspond to references by various bodies to the need for more concrete measures to ensure the mainstreaming of women's human rights system-wide (e.g. UNCHR 1997/43, op.7; E/1997/L.30, op.25; A/50/203, op. 3; A/51/69, ops. 3, 5, 21 and 41; PFA 221, 222, 231 and 308).

The meeting then identified a number of points that could ultimately be included in a gender policy statement, including that:

- measures be implemented to ensure training in women's human rights for all human rights field missions and monitors and UN personnel (UNCHR 1997/43, op. 11; E/1997/L.30, op. 33);
- in order for the integration of a gender perspective to be achieved, gender balance in the hiring practices of the UN must be a priority (GA/51/67, op. 2; E/1997/L.30, op. 36; CSW 1997/2, op. 19; ST/AI/412); and
- acknowledgment that measures and programs to ensure the integration of a gender perspective do not eliminate the need to address gender specific concerns such as violence against women and other forms of violations of women's human rights (CSW 41/3, op. 3; E/1997/L.30, op.9).

Participants at the meeting recognized that in the first weeks and months of your appointment many and sometimes conflicting demands will be made on your time and attention. Participants agreed, however, that the efforts made by the UN so far fully to incorporate a gender perspective and gender sensitivity into all aspects of operations and programs have not significantly improved the situation of women or substantially raised the awareness of UN bodies and agencies and governments of concerns particular to women.

We therefore urge you to consider the points in this letter and make the concerns of women, in terms of both the integration of a gender perspective and respect for women's human rights, a matter of the highest priority in your Office.

On behalf of the participants of the NGO expert meeting in Montreal, listed below, I look forward to your response.

Sincerely

Annex II:

Summary of Recommendations from 1994 meeting

Recommendations of the NGO Expert Meeting on the Mandate of the Special Rapporteur on Violence against Women, Its Causes and Consequences

Mandate

1. A general recommendation was put forward to the effect that a broad framework of priorities had already been provided through the three areas identified in the Declaration as requiring attention, namely, domestic violence, violence in the community and violations by the State. The task, therefore, was seen to revolve more around the question of the order in which these areas would be taken and which particular aspects of violence evident in each of them would be addressed. It was recommended therefore that emphasis be placed on the areas in the order in which they are given in the Declaration, viz. domestic violence, violence in the community and violations by the State.

2. (a) In terms of determining the priority to be given to more specific aspects of violence under these three "main headings" two possible approaches were identified. The first would allow the nature and content of the information received to determine the priorities. The second would depend on the Special Rapporteur to determine the priorities, in consultation with diverse and representative groups.

(b) The urgency attached to the question of violence against women and the determination of women to ensure that the profile of the issue is raised even further on the international agenda resulted in the recommendation that the Special Rapporteur not wait to see what patterns emerge in the information received before deciding the particular priority areas requiring action.

(c) It was recommended, therefore, that the selection of themes, based on those that most uniquely show what human rights mean when gender is a primary defining factor be used and priority placed on areas such as sexual assault and torture, and forced pregnancy.

(d) The inclusion of the relationship between the realization and/or non-realization of socio-economic rights by women and associated incidents of violence was seen as possible through an approach and method of work in which the status or non-status of these rights was seen to be a contributing factor to forms of violence against women. In other words, that consideration of this element could well be taken up under the "causes" and/or "consequences" aspect(s) of the rapporteur's mandate. This approach to the socio-economic factors resulting from or leading to violence was also seen to be consistent with the principle of the indivisibility of rights, viz. that the degree to which there is the effective enjoyment of one or more rights has a direct bearing on the effective enjoyment of other rights. A cautionary note was sounded, however, to the effect that no direct correlation between violations of economic, social and cultural rights and violence against women should be drawn in order not to dilute the strength of the mandate in terms of the emphasis given to domestic

violence, violence in the community and acts of violence perpetrated or condoned by the State.

3. It was recommended that a thematic framework be adopted rather than employing one involving the compilation of information on a country-by-country basis. An example of such a theme orientation would be to give priority to investigation and reporting on the situation of women in areas of armed conflict, the degree to which women enjoy an effective right to freedom of expression, or the use of rape and sexual assault as a form of torture and the means of intimidation by both public and private actors.

4. It was further recommended that within this thematic approach, the right to freedom of opinion and expression for women be emphasized.

5. It was recommended that the Special Rapporteur give careful consideration to the situations in some countries in which the law actively works against women. The example of the provision in law and the courts' handling of cases of prostitution was cited, where women are sentenced to as many as three years' imprisonment while the men, the prostitutes' clients, are considered in law to be and treated by the courts as witnesses.

6. Acknowledging the increase in tension between religious law and practice and secular forms of governance in many regions, it was strongly recommended that the Special Rapporteur give particular attention to violence against women arising from religious fundamentalism. The point was made that this attention should not be confined to tensions arising from differing views in the Islamic world but should also include consideration of the situation of women in societies and communities where the tenets of other religions dominate, including those religions common to the Western world.

Documentation

1. That the Special Rapporteur communicate with governments and stress the need to receive gender-disaggregated information from them.

2. That guidelines for governments, inter-governmental agencies and NGOs be prepared in terms of what kind of information is needed and in what form it should be presented.

3. That the base of skilled NGO human rights documenters and monitors be expanded through provision of training and practice.

4. That NGOs monitor compliance at the state level and convey to the Special Rapporteur their findings as to the degree to which States are meeting their obligations under the relevant international human rights instruments.

Missions

1. In light of the sensitivity attached to the question of missions and with particular reference to missions the Special Rapporteur may choose to make on the basis of a theme such as a domestic violence (the first type of mission) it was recommended that in deciding what missions to undertake the selection

be made among states representing various legal cultures and, further, that the States so designated be informed that their selection was random and did not reflect any judgment of the Special Rapporteur on the magnitude of the problem of gender-violence in the private sphere in the state concerned.

2. With regard to joint missions with other rapporteurs, the objective of which would be to emphasize the women's human rights perspective of the integrity rights involved, it was recommended that priority consideration be given to a cooperative effort with the Special Rapporteur on Torture, the Working Group on Disappearances, the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Opinion and Expression.

3. Given that the success of missions will depend in part on prior notification for NGOs in the field of women's human rights it was recommended that all necessary steps be taken to ensure that such notification is provided.

4. Similarly, inasmuch as at least part of any mission will be to meet with individuals and organizations it was recommended that a guarantee be secured from the government concerned that both NGOs and individuals will have free access to the Special Rapporteur during the time in-country.

5. Deriving from this question of access it was recommended that a guarantee by the government must be given to the Special Rapporteur, individuals, and NGOs that no retributive actions will be taken against anyone meeting with the Rapporteur.

6. It is generally recognized that people in the receiving country for an official UN mission often develop and hold unrealistically high expectations that the mission will result in a quasi-immediate improvement in circumstances and situations (e.g. rape victims in the territories of the former-Yugoslavia). It was therefore recommended that every effort be made to ensure that an overly optimistic view of possible results and potential remedies not be inadvertently expressed by the rapporteur during the course of the mission.

7. It was also recommended that a hierarchy of trauma not be created either in the planning stage or actual conduct of missions. In other words, the Rapporteur should not assume what violation is most important or which facet of the violation is most important. For example, rape may be the primary focus of the Special Rapporteur's mission but that focus cannot ignore "the additional trauma that women have experienced: death of loved ones, loss of home and community, dislocation, untreated illness and war-related injury". Similarly, it is necessary for the Special Rapporteur to bear in mind that at the time of the mission individuals in the country visited may be consumed and preoccupied by different issues and/or violations such as lack of access to the justice system and services for trauma recovery, unsafe and inhuman working conditions, health services and education.

Annex III:

Reporting Guidelines as Developed by the Special Rapporteur

In the report to the 1996 session of the Commission on Human Rights the Special Rapporteur included a reporting form that had been developed to facilitate submission of case and incident information. The form was devised to ensure that information received is sufficiently detailed to make it actionable and the Special Rapporteur can communicate the results of her discussions with the government concerned back to the source. Women's groups and human rights organizations are encouraged to use this form and to provide copies to others where and when needed.

Special Rapporteur on violence against women, its causes and consequences

CONFIDENTIAL VIOLENCE AGAINST WOMEN INFORMATION FORM

INFORMER:

Name of person/organization: _____

Address: _____

Fax/Tel/e-mail: _____

VICTIM(S):

Name: _____

Address: _____

Date of birth: _____

Nationality: _____

Sex: _____ female _____

Occupation: _____

Ethnic background (if relevant): _____

Marital status: _____

THE INCIDENT

Date: _____ Time: _____ Location/country: _____

Number of assailants: _____ Are the assailant(s) known to the victim? _____

Description of the assailant(s) (include any identifiable features): _____

_____Description of the incident: _____

_____Does the victim believe she was specifically targeted because of gender? _____
If yes, why?

_____Has the incident been reported to the relevant State authorities? _____
If so, which authorities and when?

_____Actions taken by the authorities after the incident: _____

WITNESSES: Were there any witnesses? _____

Name/age/relationship/contact address: _____

PLEASE RETURN TO:

THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN
CENTRE FOR HUMAN RIGHTS
UNITED NATIONS
1211 GENEVA 10, SWITZERLAND
(FAX:(41.22)917.02.12)

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Annex IV:
Reflections on the Implementation of the Recommendations of the
Special Rapporteur on Violence Against Women,
its Causes and Consequences

Prepared by: Ariane Brunet & Nazneen Durrani, September 1997

Introduction

Since the appointment of the Special Rapporteur on Violence Against Women, its Causes and Consequences (SRVAW) in 1994 and as a result of her activities, the issue of violence against women has gained prominence within the international community. Now, three years after the mechanism was put in place, there is a need to reflect upon the mandate and to examine how the concerns and recommendations relating to the issue of violence against women are being considered and implemented.

Within this general objective, there is a need to focus on particular concerns in order to ensure that the SRVAW's recommendations can be effectively implemented by relevant UN human rights mechanisms. The points at issue include:

- ways to ensure UN human rights reports include more than information and statement of fact on women's human rights;
- recommendations on how to ensure that these reports include a gender analysis;
- means through which reports can include follow-up and monitoring;
- methodologies required to ensure that issues of accountability and non-compliance are addressed; and
- the responsibility of the international community to ensure that the Special Rapporteur's proposed actions and recommendations are implemented at the governmental and non-governmental levels.

Overview

Upon examination of conventional mechanisms (treaty monitoring bodies) and extra-conventional mechanisms (special rapporteurs/working groups/independent experts), there is a general sense that over time there has been an increased awareness of violence against women but the issue is dealt with more comprehensively in some cases than in others. Thus, although violence against women has gained prominence within some mechanisms, it is impossible to state whether the question is being addressed systematically.

That being said, it is also hard to deduce from examining the reports of both conventional and extra-conventional mechanisms whether the actions recommended by the Special Rapporteur on Violence Against Women have been taken into account and have led to substantive reforms in government policy and practices.

Although it is not prudent to generalize, in examining reports of various conventional and extra-conventional mechanisms, it is difficult to find any indication of discussions of the causes of violence against women, and/or its consequences. Many of the reports basically set out, without analysis, statistical information related to violence against women in each country, or in general, within the specific mandate of the mechanism.

This observation is not meant to discount the importance of the documentation that does exist since this type of information is helpful in bringing patterns of violence to the forefront. As such it acts as a good starting point whereby incidents of violence against women can be somewhat assessed and, perhaps, eventually acted upon.

Keeping in mind these limitations, this paper will describe and evaluate the progress which has or has not been made in the implementation of the Special Rapporteur's recommendations by reviewing the approach taken by several of the relevant mechanisms within the UN human rights programme. The scope of this paper does not allow for an in-depth consideration of the issues, instead it highlights key concerns and criticisms in order to facilitate discussion. Furthermore, the various concerns addressed are not exhaustive. They serve as examples of the kinds of issues that need to be addressed in greater detail and depth. It must also be noted that some UN bodies have not been included on the assumption that their representatives at this meeting are better positioned to report on the issues.

The Mandate of the Special Rapporteur on Violence Against Women, its Causes and Consequences

The appointment of the Special Rapporteur on Violence against Women created a practical mechanism through which incidents and patterns of violence against women could be assessed and acted upon. This mechanism provides the means whereby recommendations can be made to the international community generally, and Governments individually, with regard to the measures that should be taken to prevent violence against women, to punish those who perpetrate such acts, and to provide remedy for victims. The three main areas of concern for the Special Rapporteur are: i) gender-based violence in the family, which includes domestic violence, genital mutilation, infanticide and incest; ii) gender-based violence in the community, which includes rape, sexual assault, sexual harassment, trafficking in women, prostitution, labour exploitation, pornography, women migrant workers, and harmful traditional practices; and iii) gender-based violence perpetrated or condoned by the State, which includes violence against women in detention, custodial violence, situations of armed conflict, and refugee and internally displaced women.

The first NGO Expert Meeting on the mandate of the SRVAW focused on how the mechanism could contribute to the work of relevant UN treaty bodies and extra-conventional mechanisms to ensure that violence against women was coherently and systematically addressed by state and non-state actors.

Conventional Mechanisms

As a prelude to examining the conventional mechanisms it might be useful to review the reports of the annual meetings of chairpersons of the human rights treaty bodies with regard to their consideration of the SRVAW's mandate and the issue of violence against women.

At their sixth meeting, in 1995, the chairpersons endorsed the recommendations,⁷ of the expert group meeting on the integration of gender perspectives into UN human rights activities and programmes⁸. These recommendations included that:

1. Gender perspectives should be fully integrated into the working methods of the treaty bodies including identification of issues and preparation of questions for country review, general comments, general recommendations, and concluding observations; and in particular, the treaty bodies should consider the gender implications of each issue under the articles of the respective instruments.
2. Guidelines for the preparation of reports by States parties should be amended to reflect specific information on women's human rights.
3. In undertaking investigative procedures, treaty bodies should make special efforts to elicit information regarding the situation of women.
4. Treaty bodies should request sex-disaggregated data from States parties and UN specialized agencies and use the data in reviewing country reports.
5. Treaty bodies should exchange information on progress, developments and situations concerning the human rights of women.
6. Reports of the treaty bodies should use gender-inclusive language wherever possible.

The chairpersons urged treaty bodies to consider how to incorporate these recommendations into their work, and to report on the progress made in this regard at the seventh meeting. This was not done, however, and has been placed on the provisional agenda for the eighth meeting to be held from 15 to 19 September of this year. It remains to be seen, therefore, how the integration of a gender perspective is advancing within the treaty bodies. Decisions taken by the chairpersons will significantly determine to what extent a gender perspective is fully integrated in their work.

The primary function of the treaty bodies is to monitor the implementation of the relevant treaties by reviewing States parties reports. Through recommendations, the treaty bodies try to assist and guide States parties in fulfilling their obligations. Thus, it is safe to assume that if reporting guidelines for States do not include the consideration of gender, it will quite likely be overlooked in States' reports thereby leaving out essential information on violations of women's human rights. In order for committees to receive and competently comment on reports they need to increase their efforts at integrating

⁷ A/50/505

⁸ Report of the Expert Group Meeting on the Development of Guidelines for the Integration of Gender Perspectives into United Nations Human Rights Activities and Programmes, (Geneva 3-7 1995) E/CN.4/1996/105

gender in their work. It is particularly necessary for committees to emphasize the recommendations of the SRVAW and provide States with specific guidelines so that ultimately reports pay close attention to the issue of violence against women. This further reinforces the importance of the eighth meeting of chairpersons.

Consideration of the SRVAW's work and the quality of that consideration by treaty bodies vary from committee to committee. The treaty bodies that give violence against women extensive attention are the Committee on the Elimination of Discrimination against Women, the Human Rights Committee, the Committee on Economic, Social, and Cultural Rights, and the Committee on the Rights of the Child.

Not surprisingly, of all treaty bodies, the Committee on the Elimination of Discrimination against Women has addressed violence against women to a much greater degree than others through important initiatives such as the adoption of General Recommendation 19. The task that remains to be done is to increase the attention given by the other treaty bodies to violations of women's human rights. In order for this to happen there needs to be more sensitization on the issue.

The Committee on Economic, Social, and Cultural Rights (CESCR) has undertaken a revision of its reporting guidelines in order to require States parties to report on the situation of women⁹. Throughout the reports of the CESCR indications are that a gender perspective is increasingly being integrated¹⁰. With regards to violence against women specifically, however, despite the fact that reports do emphasize particular incidents of violence against women, there are some cases where these incidents are not considered any further in the Committee's recommendations. For example, on discussions of Guatemala, El Salvador, and Guinea, the Committee expresses concern regarding the problem of domestic violence and the fact that little or no information has been received from the governments regarding this issue. But, in their suggestions and recommendations, no reference is made to the problem and no recommendations are included in terms of how to address the issue¹¹.

On a positive note, the Committee has realized that it still has not achieved a completely effective methodology for incorporating a gender perspective into its work, and therefore adopted a decision at its thirteenth session in which it was proposed that the Committee "identify the gender-specific issues arising under each of the substantive articles of the Covenant". Members of the Committee hope this exercise will result in an eventual revision of reporting guidelines to assist States parties in providing information on the rights of women¹².

The Committee on the Rights of the Child (CRC) has paid particular attention to the issue of violence against women. In its reports focus has been placed on the concerns of the SRVAW with regards to the rights of the girl child. In the report of its eighth session the Committee discussed gender

⁹ E/C.12/1991/1

¹⁰ E/1997/22; E/C.12/1995/18; E/C.12/1996/22

¹¹ E/1997/22 para. 129, 155, 190, & 204

¹² E/C.12/1995/18; E/1996/22 para. 380

issues extensively, including the question of raising the minimum age of marriage - an issue that was emphasized in the SRVAW's preliminary report to the Commission on Human Rights¹³ in 1995. The CRC has widely addressed gender concerns within its reports and, in doing so, demonstrates its commitment to the rights of the girl-child and ensuring a gender perspective in its work¹⁴.

The two treaty bodies that stand out for their lack of attention to issues of violence against women, and in particular the work of the SRVAW are the Committee on the Elimination of Racial Discrimination and the Committee against Torture. At the seventh meeting of chairpersons of the human rights treaty bodies, on the issue of integrating a gender perspective in their work, the chairpersons noted that the Committee on the Elimination of Racial Discrimination (CERD) decided that their guidelines for the preparation of State party reports did not need alteration¹⁵, partly on the basis of the Chair's view that it is CEDAW's "job to deal with women"¹⁶. In light of this comment it is not surprising that the Committee's reports show no indication of consideration of gender-based violations or reference to the issue of violence against women¹⁷. The only reference made to the experience of women specifically is included in the category of "the most vulnerable groups in society"¹⁸. Aside from the ineffectiveness and inadequacy of this type of reporting, the fact that there are some references in passing to the situation of women clearly illustrate the fact that they are affected by racial discrimination¹⁹ and, therefore, reporting guidelines for State parties to CERD must be altered to reflect a gender perspective.

The Committee against Torture demonstrates a similar lack of resolve to address the issue of violence against women and to integrate a gender perspective into its work. Throughout its reports there is little, if any, mention of violence against women²⁰. One of the few references to violence faced by women can be found in the 1996 report with the case of an asylum seeker in Zaire and the violence she faced while imprisoned²¹. The information provided is a simple anecdotal account without analysis or recommendations. This lack of attention raises important concerns about consistency and coordination among various UN human rights mechanisms. The absence of consideration of the situation of women by the Committee would seem to indicate a failure to take into account the work of the Special Rapporteur on Torture. The Special Rapporteur has recognized, albeit superficially, that gender is a factor in both cases and forms of torture²².

The importance of ensuring that a gender perspective is included in the work of the treaty bodies increases in importance when it is recalled that three of these bodies - the Human Rights Committee, the Committee against Torture, and the Committee on the Elimination of Racial Discrimination - have individual and collective complaint procedures through which violation of human rights can be considered. This being the case, since the potential exists for individual gender-based violations to be brought to the attention of

¹³ E/CN.4/1995/42 para. 294

¹⁴ CRC/C/38

¹⁵ A/51/482 para. 59

¹⁶ Comment made at the seventh meeting of chairpersons of all treaty bodies. See Anne Gallagher, *Ending the Marginalization in Human Rights Quarterly* Vol. 19 (1997) p. 304

¹⁷ A/50/18

¹⁸ A/50/18 para. 354

¹⁹ For example, on a discussion of racial discrimination in Mexico, the report states: "... the most vulnerable groups in society, such as women, disabled persons, migrant workers and indigenous people, did suffer some forms of discrimination caused by socio-economic factors" A/50/18 para. 354

²⁰ A/51/44; A/50/44; A/49/44

²¹ A/51/44

²² E/CN.4/1997/7 Section III

these treaty bodies, a greater understanding of the issue and a more deliberate approach to integration of a gender perspective is critical to an informed review of such complaints.

Extra-Conventional Mechanisms

The mandates of extra-conventional mechanisms are either to examine, monitor and publicly report on human rights situations in specific countries or territories (known as country mechanisms) or on major phenomena of human rights violations worldwide (known as thematic mechanisms). In Resolution 1995/85 - The Elimination of Violence Against Women - the Commission on Human Rights clearly requests these special rapporteurs, working groups, and individual experts, to assist the SRVAW with the tasks under her mandate and to "consider taking measures to implement the recommendations of the Special Rapporteur"²³. Since the appointment of the SRVAW the various extra-conventional mechanisms have increased the extent to which they address gender-based violence, but, their treatment of issues related to violence against women is highly differentiated. Among the thematic and country-specific special rapporteurs, working groups, and independent experts, some are far more inclusive of a gender perspective than others as the following examples illustrate.

The Representative of the Secretary-General on internally displaced persons (RSG), discusses extensively the situation of internally displaced women in his 1995, 1996, and 1997 reports²⁴. He clearly outlines the problems faced by internally displaced women and particularly their exposure to gender-specific violence. In some cases the reports go beyond simple explanation of facts and include an analysis of possible causes (although at times general). The 1996 report also provides recommendations on how these problems should be addressed and by what UN body²⁵. In the 1997 report, the RSG states that the situation of women has not improved²⁶, particularly with regard to issues raised in his earlier reports.

Although the frequency of gender-based violence against internally displaced women has not decreased, the RSG's detailed discussion of the situations that lead to violence against women has helped to focus the problem better, and identified the agencies and bodies within the UN system that could assist²⁷.

The RSG's report to the 1997 Commission refers to the importance of follow-up to country visits such as those to Tajikistan and Mozambique in 1996. The report states that "extensive and frequent on-site monitoring is needed to ensure that situations are, in fact, improved and that the recommendations arising from discussions with Governments and international organizations are carried out."²⁸ In terms of Tajikistan and Mozambique, for example, the RSG provides a concrete recommendation that the establishment of a human rights field presence in these countries would ensure follow-up²⁹ on recommenda-

²³ CHR 1995/85 para. 9(j)

²⁴ E/CN.4/1997/43; E/CN.4/1996/52; E/CN.4/1995/50

²⁵ The 1997 report states that "a great deal more attention should be paid to developing strategies for addressing their (displaced women) assistance, protection and development needs . . . UNHCR has adopted practical measures to improve the situation of these vulnerable categories of persons in accordance with its guidelines on the protection of refugee women and children and on sexual violence against refugees . . . these should be disseminated to agencies working with internally displaced women . . ." E/CN.4/1997/43

²⁶ E/CN.4/1997/43

²⁷ The report points to loss of family and support structures leaving women vulnerable to various forms of violence; coercion of women into providing sexual favors in exchange for basic needs; vulnerability due to lack of the ability to own property; and resulting consequences such as the need for medical and psychosocial care for victims of gender-based violence. E/CN.4/1996/52 para. 45-56

²⁸ E/CN.4/1997/43

²⁹ *Ibid*

tions made. The RSG called for "more explicitly articulated legal protection for internally displaced women", "greater on-the-ground protection", and "better implementation of existing law"³⁰. He concludes his report to the Commission with a strong statement on the needs to search for solutions to the problem of violence against women and for UN human rights machinery to be strengthened³¹.

In contrast, the reports to the Commission by the Special Rapporteur on religious intolerance, provide little, if any, insight into the gender-differentiated experiences of those who suffer violations of the principle of religious tolerance and whose rights are violated by acts based on religious extremism.

In comments on religious extremism, the 1996 report of the Special Rapporteur on religious intolerance asserts that, "Such extremism can affect an entire society (Algeria), certain categories of individuals such as writers, artists, university professors (Egypt), publishers (Mauritania), lawyers (Yemen), women (Bangladesh) and certain religious minorities (Bangladesh, Turkey)"³². The lack of detailed information and analysis is also evident in the Special Rapporteur's 1997 report. For example the report remarks that "Some categories of persons may be particularly affected: (i) In Afghanistan and Bangladesh, women are the principal victims"³³.

Specifically with regard to Afghanistan, more detailed information regarding the hardships faced by women in that region is included in other reports to the Commission. The Special Rapporteur on the situation of human rights in Afghanistan, for example, provides more in-depth information in his reports³⁴ on violence against women and gender-discrimination. Granted, the Special Rapporteur on the situation of human rights in Afghanistan is expected to have a more detailed report given the nature of his mandate. Nonetheless, since a large percentage of the causes of gender-discrimination and violence against women in Afghanistan is based on religious extremism, *it is reasonable to expect that this information and further analysis would be incorporated into reports of the Special Rapporteur on religious intolerance.*

Reporting mechanisms are critical to ensure that a gender perspective is included on a system-wide basis in the UN. According to the report of the expert group meeting on the integration of gender perspectives into human rights activities and programmes, those mechanisms that are mandated with the functions of research, study, or investigation need to include a gender perspective and address human rights issues of specific concern to women within the context of the relevant mandate³⁵.

Related to the issue of reporting mechanisms, the collection of information plays a key role in gender analysis. Thus, all data collected needs to be disaggregated by sex. However, sex-disaggregated data cannot be considered an end in itself. Gender analysis is essential for an adequate understanding of the factors involved in the violations of women's human rights. Thus, while sex-differentiated data is useful, reports such as that of the Special Rapporteur on the

³⁰ E/CN.4/1996/52 para. 65
E/CN.4/1996/52/Add.2

³¹ E/CN.4/1997/43

³² E/CN.4/1996/95 para. 45

³³ E/CN.4/1997/91 para. 20

³⁴ E/CN.4/1997/59 para.
27, 41, 62, 82-89

³⁵ E/CN.4/1996/105

question of torture prove to be incomplete and ineffective when they only provide statistics with no accompanying analysis. For example, the 1997 report records that this Special Rapporteur sent letters to various Governments discussing "some 669 cases (about 67 known to be women) . . . 130 urgent appeals . . . on behalf of some 490 individuals (at least 50 known to be women) . . .".³⁶ It must be noted that the Special Rapporteur's report does provide further explanation in the sections dealing with some specific countries but this treatment of a gender perspective is hardly adequate. In reporting on Indonesia for example, the SR states that, "although the majority of torture victims seemed to be males, reports were also received documenting sexual abuse, including rape, of women under detention or in other circumstances, such as when house-to-house searches were conducted."³⁷ In the same report it was very difficult, however, to find any conclusions or recommendations that addressed the issue of women's human rights or the elimination of violence against women.

Other than neglect of the issue of violence against women, some UN human rights mechanisms do a greater disservice by their lack of understanding of gender concerns. The 1996 report of the Working Group on Arbitrary Detention, for example, notes that, "although detentions of women have been reported to the Working Group, it is not aware of cases in which a person was deprived of liberty on account of being a woman"³⁸. Clearly, comments such as this one would not be made had the Working Group had a better understanding of gender concerns. It is reasonable to suggest that if the Working Group were to conclude that men are not detained because they are men, the international community would find such a comment ill-informed and inadequate. Thus, as this illustrates, initiatives to ensure a better understanding of gender concerns within the thematic mechanisms are vital.

The development of a concrete methodology for the SRVAW to address these issues and others that arise due to a lack of attention to ensuring a gender perspective is a necessary starting point for the integration of women's rights into the UN system for the promotion and protection of human rights. A second key element in the integration process may be a more systematic approach to seeking invitations from Governments to conduct not only separate missions by the SRVAW but also joint missions with other thematic and country mechanisms. For example, a joint mission between the SRVAW and the Special Rapporteur on religious intolerance could prove to be an effective way to bring to light the violations of women's rights as a result of religious intolerance. Third, it should be noted that the SRVAW and the Special Rapporteur on freedom of opinion and expression have agreed to submit a joint report, on the relationship between violence against women and obstacles to women's freedom of expression, to the 1998 Commission. More initiatives along this line would perhaps facilitate the integration process.

³⁶ E/CN.4/1997/7 Section III

³⁷ *Ibid.*

³⁸ E/CN.4/1996/40 para. 68

Conclusion

The UN human rights programme has drawn attention to the importance of women's rights, discrimination against women, and the issue of violence against women, particularly through the international human rights instruments which are based on a non-discriminatory model. The UN calls on treaty bodies, special rapporteurs, working groups, and independent experts to address the characteristics and nature of human rights violations that are specifically directed against women and that are in contravention of the non-discrimination provisions in the international instruments.

This paper has identified some, but not all, of the areas of concern regarding the implementation of the SRVAW's mandate by reviewing several relevant UN human rights mechanisms. The list of problems illustrated, although not exhaustive, raises several important questions for discussion noted at the beginning of this paper, namely:

- i) What ways can be recommended to ensure that reports include more than simple information and statement of fact?
 - ii) What recommendations are needed to ensure that reports include a gender analysis as an essential starting point for the implementation of the SRVAW's recommendations?
 - iii) How can recommendations and conclusions provided in reports include the need for concrete follow-up and monitoring mechanisms with regard to violence against women?
 - iv) What methodology and reporting mechanisms are required to ensure that issues of accountability and non-compliance are addressed?
 - v) What are the joint responsibilities of the international community to ensure that the recommendations and actions proposed by the SRVAW are fully implemented at both governmental and non-governmental levels?
-

Annex V: List of Participants

Ms. Jan Bauer	<i>UN Representative, Article 19</i>
Ms. Ariane Brunet	<i>Women's Rights Coordinator, Canada Programme International Centre for Human Rights and Democratic Development</i>
Ms. Charlotte Bunch	<i>Executive Director, Centre for Women's Global Leadership</i>
Ms. Agnès Callamand	<i>Research Policy Coordinator, International Secretariat, Amnesty International</i>
Ms. Roberta Clarke	<i>Attorney-at-Law, Trinity Chambers</i>
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